Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 75-442

JOHN H. POELKER, Mayor of the City of St. Louis, Missouri,
and
R. DEAN WOCHNER, M.D., Director of Health and Hospitals, and Acting Commissioner of Hospitals of the City of St. Louis, Missouri,
Petitioners,

vs.

JANE DOE, and a Class,
Respondents.

On Writ of Certiorari to the United States Court of Appeals
For the Eighth Circuit

BRIEF AMICI CURIAE

Of the Honorable James R. Butler, Councilman, Second District, a Political Subdivision of St. Louis County and the State of Missouri; Alan J. Bailey, M.S.W.; Ann O'Donnell, R.N., Chairman of the Eastern Region of Missouri Citizens for Life; Edward A. O'Donnell; William Murphy, M.S.W.; Dr. William Brennan, M.S.W., Ph.D.; George Ryan, M.S.W., A.C.S.W.; Edward Ratermann; Dr. George W. Knight, III; Robert E. Ratermann, Pro Se, Member of Lawyers for Life; Theodore J. Petersen; Joseph J. Heithaus III; Eleanor Heithaus; James D. Schonhorst; Dorothy Schonhorst; Ronald Merideth; Mary Jeanne Merideth; Barbara O'Mara; Nancy J. Dougherty; Kathy Begley; and Judith A. Cassilly and Organization, Social Workers for Life; in Support of Petitioners.

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CORRECTIONS (ERRATA) FOR BRIEF AMICI CURIAE

Of the Honorable James R. Butler, Councilman, Second District; a Political Subdivision of St. Louis County and the State of Missouri; Alan J. Bailey, M.S.W.; Ann O'Donnell, R.N., Chairman of the Eastern Region of Missouri Citizens for Life; Edward A. O'Donnell, William Murphy, M.S.W.; Dr. William Brennan, M.S.W., Ph.D.; George Ryan, M.S.W., A.C.S.W.; Edward Ratermann; Dr. George W. Knight, III; Robert E. Ratermann, Pro Se, Member of Lawyers for Life; Theodore J. Petersen; Joseph J. Heithaus, III; Eleanor Heithaus; James D. Schonhorst; Dorothy Schonhorst; Ronald Merideth; Mary Jeanne Merideth; Barbara O'Mara; Nancy J. Dougherty; Kathy Begley; and Judith A. Cassilly and Organization, Social Workers for Life; in Support of Petitioners.

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We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness: ¶ 2 12

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Yahweh 14

Page	Line	Corrections to Text
iv	21	Change "of" to — or —.
v	14	Change "1975" to — 1976 —.
v	21	After "Missouri" insert —. —.
vi	29	Omit duplication of footnote: "Request for oral argument accompanies. . . . Rule 50(1). —.
vii	5	After "time" insert —. Rule 50(1). (2). (3). (4) and (5), —.
vii	9	Change "50(4)" to — 50(1). (2). (3). (4) and (5) —.
vii	11	After "50(1)," insert — (2). (3) —.
vii	12	After "(4)" delete "," and add — and (5). —.
vii	28	Change "4" to — 5 —.
vii	30	Change "6" to — 7 —.
viii	20	Delete: alleged as a brief additional ground —.
viii	21	After "Court" delete "." and add —. the belief that a Nation founded "Under God". takes such of His Words seriously on the question in this case. —.
viii	27	After "additional" delete — such —.
viii	29	After "34" delete "(2)" and after "34" insert — (1). (2). (3) . . . "as provided in Rule 50 . . .", (4) and (5); — and after "argument" insert — Rule 50(1) —.
2	20	After "Court" insert —. —. After "Request" insert — of him —.

Page	Line	Corrections to Text
2	21	After "letter" insert — (see: under date of August 12, 1976, at page iv herein) — and delete: to the motion addressed to him—.
2	26	After "Amici" insert —, —. After "34" insert — (actually Amici believed by their motion set out herein that they were proceeding also under Rule 50(1), (2), (3), (4) and (5)), —.
2	30	After "brief" insert —, —.
2	32	After "instructions" insert — (Memorandum Sup. Ct. U.S.) —.
3	3	Change "Counsel for Amici's" to — Counsel-for-Amici's —.
3	11	After "counsel" add —, —. After "counsel" delete — or —.
3	12	After "consideration" delete "." and insert —, (See: Motion-proper to this effect at page 26 herein). —.
3	13	After "2." delete sentence beginning "The Statement of Jurisdictional, etc.. . . ." and ending "writ of this Court." — and After "2." insert — The Statement of Jurisdictional Grounds, The Constitutional Provisions Involved, the Questions Presented and the Statement of the Case are omitted from this Amici Curiae brief, since they are amply stated in the Motions of Petitioners for Stay of Judgment and Execution of July 31, 1975 and August 20, 1975, Pending Application to this Court for Certiorari to the Court of Appeals for the Eighth Circuit and in the Petition for the Writ of Certiorari to The United States Court of Appeals for the Eighth Circuit, filed in this Court September 20, 1975 and granted by this Court July 6, 1976 and in the Brief of the Petitioners being filed August 20, 1976, pursuant to such writ of this Court. —.

3	26	Change "petitioners" to — Petitioners —.
4	8	After "member" insert —, —.
4	34	Omit "(See Appendix A-1 for more particulars on the interest of the above named Amici, and" —.
5	1	Change "other persons" to — Other Persons —.
5	2	After "hundred" insert —, — and change "including" to — include —.
5	7	Omit "(See for more particulars, Appendix F-1 and legend.) —.
6	10	After "Court" insert — they —.
6	11	After "one" insert — (—.
6	12	After "degree" insert —) —.
6	13	After "flagrantly" insert — violated —.
6	18	Change "is" to — [was] —.
6	19	After ". . . District Court" insert — (See: Petition for a Writ of Certiorari, page 4, question 3 by Petitioner; Also See: pages 11 and 15 of Petitioners' Brief, on Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit) —.
6	20	Omit "by the counsel" and change "U.S." to — United States —.

Page	Line	Corrections to Text
6	21	Change "Eighth Circuit District Court of Appeals" to — Court of Appeals For the Eighth Circuit, —.
6	22	Change "clause of the constitution and the admonition" to — clauses of the Constitution (Amendments V and XIV) and the Admonition —.
6	23	Change "federal rules of civil procedure" to — Federal Rules of Civil Procedure, —.
6	26	After "reflects" insert —, — and change "substitute factual character" to — substituted a factual characterization thereof —.
6	27	After "mandate" insert —. — and after " . " delete "in which" and change "a" to — A —
7	3	After "it" insert — (Amendment XIV) and after "hospitals" insert — must —.
7	5	After "pregnancy" insert — Doe v. Poelker, 515 F.2d 541(C.A. 8th, 1975) —.
7	23	After "life" insert —, —.
7	26	Change "in" to — an —.
7	28	After "forever" change " . " to —, —.
7	29	Change "For" to — for —.
8	15	Change "?" to — ! —.
8	28	After "convenience" delete "." and add —, — and change "At" to — at —.
9	2	After "technology" delete " . " and insert —), Roe v. Wade, 410 U.S. 116 (1973) and 153, 154, 156, 157, 158, 159, 160,

Page	Line	Corrections to Text
		163 and 164; Doe v. Bolton, 410 U.S. 179 (1973); United States v. Vuitch, 402 U.S. 62 (1971). —.
9	3	Change "that date" to — these dates, —.
9	6	Change "cases it unleased" to — cases, It unleashed —.
9	8	Change "sojurn" to — sojourn — and After "here." insert — The groundwork of such mischief, of course, has its antecedents in United States v. Vuitch, 402 U.S. 62 (1971). See: Roe v. Wade at p. 159, "to the same effect" (language of the Court in Roe v. Wade). —.
9	10	Change "unleasing" to — unleashing —.
9	13	Change "catastrophe if accepted (and God forbid)" to — catastrophe, if accepted, (and God forbid), —.
9	16	Delete paragraphs beginning "Petitioners are, etc.," and ending "August 8, 1975" and insert — Petitioners are concerned about the action of the United States Court of Appeals for the Eighth Circuit in appeals from the United States District Court for the Eastern District of Missouri, Eastern Division, *No. 74-1232*, Doe, et al. v. Poelker, (etc.), et al., Petn. for Cert., (App. ("Addendum") pp. A-11 - A-17; on Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, Brief of Petitioners, p. 2, Sec. B.; 497 F.2d 1063, (C.A. 8th, 1974), *and No. 75-1069*, most particularly, with respect to its mandate

Page	Line	Corrections to Text
		given July 8, 1975 (Doe, et al. v. Poelker, (etc.), et al., Petn. for Cert., App. ("Addendum") p. A-55), following an initial opinion-judgment of April 14, 1975 (See: Ibid., Petn. for Cert., App. ("Addendum") p. A-27) as modified May 7, 1975 (See: Ibid., Petn. for Cert., App. ("Addendum") p. A-40-A.-42) and June 2, 1975 (See: Ibid., Petn. for Cert., App. ("Addendum") p. A-44-A-53); Doe v. Poelker, 515 F.2d 541 (C.A. 8th, 1975).
		As a corollary to such mandate, and such opinion with modifications, and such judgments, orders and decrees, Amici are further concerned in particular about the Orders, Judgment, Decree and Order and Memorandum of the United States District Court for the Eastern District of Missouri, Eastern Division, issued Friday, August 8, 1975 (See: Ibid., Petn. for Cert., App. ("Addendum") p. A-55 and sequence, Ibid., A-56-A-59). —.
10	15	After "participation" insert — therein —.
10	16	After "among" delete "the" and insert — themselves as —.
10	18	After "If" delete "they" and insert — If such opinions, judgments, and decrees of the United States Court of Appeals for the Eighth Circuit —.
10	19	Change "court" to — Court —.
10	21	After "Bolton," insert — (a construction not conceded herein), —.

Page	Line	Corrections to Text
10	22	Change "court" to — Court —.
10	26	After "Roe" delete "v." and insert — and —.
10	33	After "Motion" delete "herein preceding Brief Proper)." and insert — and Application of Amici for Enlargement of Time to File Brief, p. vi). —.
11	5	After "opinions" delete "issuing forth" and insert — of these lower Federal Courts aggravating such broad attacks upon human life by this Court. —
11	6	Delete "from our lower Federal Courts." —.
11	11	After " 'Liberty'." insert — (—.
11	12	Change "of, Responsibility as well as right," to — of Responsibility, as well as Right), —.
11	26	After "fornication" insert — (Eph 5:5; 1C 6:9; Gal 5:19; Rom 1:18-32) —.
11	32	After "Mercy" delete "." and insert — (See: Ex 21:22-25; Ps 139:13-16; Ps 51:5; Jer 1:4,5; Lk 1:24-56). These latter citations are from Rev. Dr. George W. Knight, III, Th. D., from an article "Abortion: How Does the Word of God Regard the Human Fetus?", The Presbyterian Guardian, September, 1971, pp. 100-102. Now reprinted as a separate piece. Eleven articles for the forthcoming *Wycliffe Bible Encyclopedia* (Moody), 1974. —

Page	Line	Corrections to Text
11	34	After "redress" insert — (Amendment I) —.
12	4	Change "Buchenwold" to — Buchenwald —.
12	10	After "LIBERTY" add —, —.
12	16	After "ence" insert — (Initiated by Vuitch, followed by Roe and Doe and now Doe v. Poelker by the United States Court of Appeals for the Eighth Circuit) — and Change "is" to — are —.
12	18	Change "sows" to — sow —.
12	21	After "Independence" insert — (solemnly stating that: "we hold these truths to be self-evident that all men are created equal; that they are endowed by the Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness;" and —.
12	22	After "of" insert — "[their] lives, [their] fortunes, and [their] sacred honor") —.
12	27	After "thereto" delete —, — and after "welfare" delete —, — and insert — — —.
12	29	After "slavery" insert —), —.
12	30	After "they" insert — also — and after "?" change "This" to — It —.
13	30	Change "charter" to — character —.
14	16	Delete paragraphs beginning "Among other things . . .." and ending on page 15, line 2 ". . . gift to mankind (Part I)." and insert —

Page	Line	Corrections to Text

Among other things, it is said with callous indifference to the sanctity of human life by the scrivener in Roe v. Wade at 410 U.S. 166, and following:

> "This Texas federal appeal and its Georgia companion Doe v. Bolton, . . . present constitutional challenges to state criminal abortion legislation. The Texas statutes . . . are typical . . . the Georgia statutes, in contrast have a modern cast, . . . reflect [ing] the influences of recent attitudinal change, of advancing medical knowledge and techniques, and of new thinking about an old issue . . . [challenges] to population growth, pollution, poverty, and racial overtones . . . complicat [ing] . . . the problem."

At page 117 Lochner v. New York (198 U.S. 45, 76 (1905)) is wrenched out of context to provide a backdrop to what is to follow.

In Part I acknowledgment is made of a previous century plus (1854) of an adoption of a criminal abortion statute by Texas. Studies of the history of statutes similar to that of Texas and passed by many other states indicate a similar and even older longevity, during all of the early active period of such legislation. The State population

Page	Line	Corrections to Text
		vis a vis legislatures were dominantly Christian and Protestant, not Catholic, and in fact such legislation can be shown on the medical, scientific and legislative history, to have been passed to protect the unborn, a gift of human life, in pro-creative cooperation between men and women with the Creator, and as the first and singular gift to mankind. —.
15	3	After "II" insert — (at p. 120 of the Roe v. Wade case) —.
15	6	After "III" insert — (at p. 123) —.
15	8	After "under" insert — 28 U.S.C. — and Change "suggestion" to — suggesting —.
15	9	After "certiorari." insert — Perhaps the Court should similarly review this case as one reviewable on appeal. —.
15	18	After "describes" insert — that —.
15	19	After "Statutes" insert — is that they —.
15	20	Change "as . . . improperly avoiding a right . . . by [a]" to — improperly invade a right, . . . possessed by the —.
15	21	After "pregnancy." insert — " — and after "real" insert —, —.
15	22	After "What" insert —, — and after "woman" insert —, —.
18	19	After "about" delete "causes" and insert —, — what is a pregnant woman, vis-a-vis, what a woman conceives-comes —.

Page	Line	Corrections to Text
18	20	After "from" insert — Father —.
18	21	After "1976." insert — Father —.
23	11	After "One" insert — a Kelly Girl — and delete "Wednesday" and after "Starting" insert — Tuesday — and After "August" change "18" to — 17 —.
23	12	After "at" delete "8 A.M." and insert — 12:30 P.M. — and after "Children" delete "." and insert — : —.
24	1	After "Protection" insert — Clause —.
24	15	After "(See Exhibit II)" insert — — —.
26	11	After "12" delete "mo-" and insert — addressed to the Honorable Michael Rodak, Jr., Clerk of this Court, requesting he file the accompanying Motion and Application of Amici Curiae for an Extension (Enlargement) of Time . . . to File Brief in Support of Petitioners, etc., (See: pp. iv-ix and Note 1, pp. 1-3 of this Brief).—
26	12	Delete — tion for time and Note 1 of brief. —and change "moved" to — move —.
26	13	Change "brief material and appendix materials" to — Brief Material and/or a *Supplemental Brief* and Appendix —.
A-1	11	After "10551" insert — from *Commentary*, Volume Sixty, December, 1975, p. 81. *Commentary* is published monthly by the American Jewish Committee. Editorial & Business Offices: 165 E. 56th St., New York, N.Y. 10022 —.

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A-2	9	After "1976" delete "." and insert —. p. 67. —.
A-4	1	Change "20" to — 16 —.
A-4	34	Delete — Milton F. Svetanics, Jr. —.
A-4	35	Delete — 27th Ward —.
A-5		After "A-5" and above line 1 insert — YES — 4 —.
A-7	12	After "of" change "au" to — Au —.
A-7	13	Change "gustian" to — gustinian —.
A-7	25	Change "no" to — not —.
A-8	20	Change "August" to — Augustine —.
A-8	35	Change "Aug." to — Augustine —.
A-10	14	Change "if" to — is —.
A-11	23	Change "of" to — as —.
A-11	29	Change "to" to — [at] —.
A-12	12	After "Conception" insert — but many other points of Catholic Doctrine could be more —.
A-12	32	After "with" insert — the —.
A-13	17	After "abortion in" insert — the —.
A-13	18	After "by" insert — the —.
A-13	21	Change "analyses" to — analizes —.
A-13	22	After "to" insert — my —.
A-14	12	Change "trary" to — trariwise — and delete "to abortion" —.
A-14	31	Change "as" to — on —.
A-16	30	After "member of" insert — [the] —.
A-17	16	After "at" insert — my —.

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Robert E. Ratermann
Attorney at Law
11232 Bellefontaine Road
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741-1352

August 12, 1976

Hon. Michael Rodak, Jr.
Clerk, Supreme Court of the United States
Washington, DC 20543

Re: Poelker, etc., et al. v.
Doe, etc., No. 75-442

Dear Mr. Rodak:

Would you please file the accompanying *Motion for an Extension (Enlargement) of Time in Which to File Brief* for my clients, Amici, the Honorable James R. Butler, Councilman, Second District, St. Louis County, Missouri, et al., under what are believed to be extraordinary circumstances.

Would you please further bring this motion to the attention of Justice Harry A. Blackmun, Associate Justice and Circuit Justice of the 8th Judicial Circuit in which the above cause has arisen, or as "the Court of the Chief Justice will reasonably instruct you," Rule 50(4).

Please note from the motion and consider this "accompanying request for oral argument of the motion and application to be supported by brief", if necessary, and please bring this to the attention of the Honorable Harry A. Blackmun, Associate Jus-

tice, etc., Rule 50(1) and 34(2) for reasons of "extraordinary circumstances." Thank you.

Respectfully,

ROBERT E. RATERMANN
Attorney for Amici Curiae

RER:deh

Enclosure: Motion

cc: Mr. Frank Susman,
Attorney for Respondents
Mr. Jerome M. McLaughlin,
Attorney for Amici Curiae

Mr. Jack L. Koehr and
Mr. Eugene P. Freeman,
Attorneys for Petitioners

In the
Supreme Court of the United States

October Term, 1975

No. 75-442

JOHN H. POELKER, Mayor of the City of
St. Louis, Missouri,

and

R. DEAN WOCHNER, M.D., Director of Health and Hospitals,
and Acting Commissioner of Hospitals of the
City of St. Louis, Missouri
Petitioners,

vs.

Jane Doe, and a Class,
Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Eighth Circuit

Motion and Application* of Amici Curiae, for an Extension (Enlargement) of Time in Which to File Their Brief in Support of Petitioners and Request, if Necessary, for Oral Argument Thereon

---

Amici Curiae are among others the following: the Honorable James R. Butler, Councilman, Second District, a Political Subdivision of St. Louis County and the State of Missouri; Alan J. Bailey, M.S.W.; Ann O'Donnell, R.N., Chairman of the Eastern Region of Missouri Citizens for Life; Edward A. O'Donnell; William Murphy, M.S.W.; Dr. William Brennan, M.S.W., Ph.D.; George Ryan, M.S.W., A.C.S.W.; Edward Ratermann; Dr. George W. Knight, III; Robert E. Ratermann, Pro Se, Member of Lawyers for Life; Theodore J. Petersen; Joseph J. Heithaus, III; Eleanor Heithaus; James D. Schonhorst; Dorothy Schonhorst; Ronald Merideth; Mary Jeanne Merideth; Barbara O'Mara; Nancy J. Dougherty; Kathy Begley; and Judith A. Cassilly and Organization, Social Workers for Life; in Support of Petitioners.

Motion and Application* of Amici Curiae, for an Extension (Enlargement) of Time in Which to File Their Brief in Support of Petitioners and Request, if Necessary, for Oral Argument Thereon

---

* Request for oral argument accompanies this application, Rule 50(1). Proof of service on all other parties accompanies this motion and application, Rule 50(2). Submitted to the clerk with cover letter, Rule 50(1).

* Request for oral argument accompanies this application, Rule 50(1). Proof of service on all other parties accompanies this motion and application, Rule 50(2). Submitted to the clerk with cover letter, Rule 50(1).

Pursuant to Rule 50, "APPLICATIONS TO INDIVIDUAL JUSTICES; PRACTICE IN CHAMBERS," Amici, the Honorable James R. Butler, Councilman, second district, St. Louis County, Missouri, et al., move and apply* for an extension of time in which to file their brief in support of Petitioners with this Honorable Supreme Court of the United States, addressing same to the Honorable Harry A. Blackmun, Associate Justice thereof, the Court being in vacation, and in the spirit of Rule 50(4), submitting same to the Honorable Michael Rodak, Jr., Clerk, Supreme Court of the United States for prompt transmittal to said Justice, and/or the Justice concerned. Rule 50(1), (4), (6), on the grounds that:

1. From July 6, 1976, the date of the court action in the above case, granting "the motion of James R. Butler, et al., for leave to file a brief as amici curiae," until Thursday, July 14, 1976, counsel for said amici was out of his city of residence and away from his house and office.

2. On or about Monday, July 11, 1976, counsel for amici, Robert E. Ratermann, at about 4:30 p.m. New York time, learned from his wife, the late deceased Helen C. Ratermann, that she had taken seriously ill and was thereafter on Wednesday, July 13, at about 2:30 p.m. St. Louis time taken by ambulance in an unconscious state, near death, from the family residence to Christian Northeast Hospital, St. Louis County, Missouri, to the emergency service. Approximately ten (10) hours thereafter she was transferred to the intensive care unit, where she remained critically ill and only intermittently conscious until Thursday, August 4, 1976, at which time she died at approximately 7:30 a.m. Her remains subsequently were buried Saturday, August 6, 1976, from the Church of Our Lady of Loretto to Calvary Cemetery in St. Louis, Missouri.

3. Counsel has devoted as much time as he felt was humanly possible to prepare a brief for the amici in the above case. Due

to his present understanding that the brief of his clients, the same named amici curiae, must be filed by him on their behalf on August 20, 1976, he has concluded that anything he may be able to file in this regard within the remaining days on or before August 20, 1976, would be less than his best on their behalf.

4. In addition he is at present not in the best of health and has lost the assistance of some staff and in need of raising additional funds to cover expenses to be incurred. These difficulties he expects to correct with the assistance of others in a matter of several days.

5. The case involves momentous constitutional consequences. The Court, in the sincere opinion of amici, will either affirm the "Sanctity of Life," or deny it in its totality in its eventual opinion. It will choose life or death. In Deuteronomy Ch. 30 V. 19, it says out of the mouth of God: "I have set before you life and death, the blessing and the curse. Choose life, then, that you and your descendants may live, by loving the Lord, your God, heeding his voice, and holding fast to him." This additional ground of the motion is alleged as a brief additional ground, sincerely offered to this Court.

WHEREFORE: Amici, by their counsel, respectfully pray the Honorable Harry A. Blackmun, Associate Justice, "duly allotted to the circuit within which the case arises,": (1) leave of court for an additional forty-five (45) days, counting from and after the 20th day of August, 1976, in which to file their brief in the above cause; or (2) leave of court for such additional such time as is deemed proper in the "extraordinary circumstances" Rule 34(2); and, if necessary, (3) leave for oral argument, supported

by brief, on the above motion and application, all in support of Petitioners.

Respectfully submitted,

ROBERT E. RATERMANN
Attorney for Amici Curiae, the Honorable James R. Butler, et al., etc., in the above captioned case

Copy sent by first class
special delivery U.S. mail to:

Mr. Frank Susman,
Attorney for Respondents

Mr. Jerome M. McLaughlin,
Attorney for Amici Curiae

Mr. Jack L. Koehr and
Mr. Eugene P. Freeman,
Attorneys for Petitioners

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 75-442

JOHN H. POELKER, Mayor of the City of St. Louis, Missouri,
and
R. DEAN WOCHNER, M.D., Director of Health and Hospitals, and Acting Commissioner of Hospitals of the City of St. Louis, Missouri,
Petitioners,

vs.

JANE DOE, and a Class,
Respondents.

On Writ of Certiorari to the United States Court of Appeals
For the Eighth Circuit

BRIEF AMICI CURIAE

Of the Honorable James R. Butler, Councilman, Second District, a Political Subdivision of St. Louis County and the State of Missouri; Alan J. Bailey, M.S.W.; Ann O'Donnell, R.N., Chairman of the Eastern Region of Missouri Citizens for Life; Edward A. O'Donnell; William Murphy, M.S.W.; Dr. William Brennan, M.S.W., Ph.D.; George Ryan, M.S.W., A.C.S.W.; Edward Ratermann; Dr. George W. Knight, III; Robert E. Ratermann, Pro Se, Member of Lawyers for Life; Theodore J. Petersen; Joseph J. Heithaus III; Eleanor Heithaus; James D. Schonhorst; Dorothy Schonhorst; Ronald Merideth; Mary Jeanne Merideth; Barbara O'Mara; Nancy J. Dougherty; Kathy Begley; and Judith A. Cassilly and Organization, Social Workers for Life; in Support of Petitioners.

NOTE

1. Counsel for Amici bring to the Court's attention in connection with the motion and application for an enlargement or extension of time in which to file this brief that on Monday

morning of the 16th of August, at approximately 11:30 a.m., a call was placed to the Clerk's office for the purpose of leaving word of a temporary change of address and phone number so as to facilitate response through the Clerk of any action on said motion.

The Honorable Michael Rodack, Jr. acknowledged the call personally, took the proffered information, acknowledged receipt of the motion sent by Mailgram and by typewritten communication at approximately 11:45 p.m. Friday, August 13th, 1976 by Western Union and approximately 1:00 a.m. by the United States Postal Service, Saturday, August 14th, 1976.

Also, for the record Amici states by their counsel that he received a call from Western Union at 3:15 a.m., August 14th indicating that because of technological failure of their equipment they had lost part of the contents of the above described Mailgram, whereupon, counsel redictated that portion of the Mailgram thus missing between the hours of 3:15 a.m. and 4:30 a.m.

The Honorable Michael Rodack, Jr., Clerk of this Honorable Court indicated according to my request in the above mentioned covering letter to the motion addressed to him that he had brought the matters suggested therein to the attention of the Honorable Harry A. Blackmun, Associate Justice and Circuit Justice of the 8th Judicial Circuit and that it was the Justice's opinion as well as that of his own that a motion such as had been submitted by Counsel for Amici under Rule 34 could not be granted, that said rule applied rather in their opinion only to Parties to a case before this Honorable Court.

The Clerk (as Counsel best recalls) asked Counsel when he thought he could file his client's brief realizing (as both of us did) that the filing date for briefs in this case was given by the Clerk of the Court in mimeographed instructions attached to

the original letter to Mr. Eugene P. Freeman, July 6th, 1976, as August 20th, 1976.

Counsel for Amici's response in the light of all the above was that he felt himself bound to do the best he could in a brief to be lodged with the Court August 20th, 1976.

Counsel for Amici further believes in the light of the "momentous constitutional consequences" of any decision on the merits of this case, that, perhaps, the Court would consider whether the rules as they stand should be suspended and Amici in the circumstances be allowed to file at a later date by its order timely noticed to counsel or additional brief material, and on this suggestion, so moves herein now, for such consideration.

2. The Statement of jurisdictional grounds, The Constitutional provisions involved, the questions presented and the statement of the case are omitted from this Amici Curiae brief, since they are amply stated in the application and petition for a writ of certiorari of August 20th, 1975-September 21, 1975 granted by this court July 6, 1976 and in the brief of the petitioners being filed August 20th, 1975, pursuant to such writ of this Court. Amici further adopt the contents of the single appendix agreed to by the parties July 22, 1976 and in preparation by the printer as set out in a letter under date of July 23, 1976 by Eugene P. Freeman, Attorney for Petitioners and addressed to the Honorable Michael Rodak, Jr., Clerk of this Honorable Court.

Amici adopt all arguments of petitioners on the points as presented in their brief to this Court and such other matters of Petitioners' brief,—insofar as—they are not inconsistent with arguments and points which the Amici find it necessary to present in support of the basic issues as they see them raised by the case.

INTEREST OF AMICI CURIAE

The individuals whose names are appended hereto as Amici Curiae are: the Honorable James R. Butler, Councilman, Second District, St. Louis County Council, St. Louis County Missouri, said District being a political subdivision of St. Louis County, State of Missouri, United States of Amercia; Alan J. Bailey, M.S.W., "citizen of the United States (as are all of the personally named Amici), member world community of persons conceived, born and who will one day die, holding firm to the tenets of the Declaration of Independence, especially that which speaks of the endowment of all men, holding to the Judeo-Christian tradition, including a belief that every individual is indeed a human person of absolute value from conception to natural death, serving the human community and the protection of life, and professionally working in the field of social work as an advocate and helper of children and adults, whose lives are in danger due to health, social or emotional problems, and even the laws of the state, opposed to abortion on demand and to the United States Supreme Court decision proclaiming that an individual woman and her doctor have the awesome right to kill, currently working with married and unmarried women facing unwanted and untimely pregnancies, helping them with the social, emotional, psychological and spiritual needs which allow them to bring their children to term and accept viable alternatives to abortion": Alan J. Bailey, M.S.W.; Ann O'Donnell, R.N.; Edward O'Donnell; William Murphy, M.S.W.; Dr. William Brennan, M.S.W., Ph.D.; George Ryan, M.S.W., A.C.S.W.; Edward Ratermann; Dr. George W. Knight, III, Ph.D., Robert E. Ratermann, Pro Se, Member of Lawyers for Life; Theodore J. Petersen; Joseph J. Heithaus III; Eleanor Heithaus; James D. Schonhorst; Dorothy Schonhorst; Ronald Merideth; Mary Jeanne Merideth; Barbara O'Mara; Nancy Dougherty; Kathy Begley; Judith A. Cassilly; and Organization, Social Workers for Life. (See Appendix A-1 for more particulars on the interest of the

above named Amici, and other persons, members of Social Workers for Life, whose membership is several hundred including in addition to the above the following: Roger O. McManus, B.S., M.S.W.; Bonnie J. McManus, B.S., M.S.W.; John C. Goeke, D.S.W.; Thomas J. Mangagna, B.A., M.S.W.; John M. Lally, M.S.W.; Anne Sullivan, A.B.; Arthur Joseph Korte, M.A.; Barry McLaughlin, B.S., M.S.W. (See for more particulars, Appendix F-1 and legend.)

ARGUMENT

I

Amici Adopt Brief for the Petitioners With Some Special Observations

Amici adopt brief for the Petitioners on Writ of Certiorari to the United States Circuit Court of Appeals.

On page three of Petitioners' Petition for a Writ of Certiorari questions are presented for review. Amici, with respect to point three, based on the entire record certified to this Court, observe that in the entire history of appellate review before this Court know of no line of cases such as this one and by impression several others in some degree where Article III of the Federal Constitution has been more flagrantly filed by the Plaintiffs with respect to the condition prerequisite that a case for review by a Court of Appeals must have the character of a controversy before jurisdiction lies in view of the fact on the record that an abortion was procured "within five days of filing and prior to summons of one defendant and before the case is heard by the District Court".

Amici by the counsel are profoundly shocked that the U.S. Eighth Circuit District Court of Appeals contrary to the due process clause of the constitution and the admonition of Rule 52 (A) of the federal rules of civil procedure substituted their own constructions of the complaint of the plaintiff as evidenced in the entire record and on such evidentiary matters as the entire record reflects substitute factual character to reach their mandate in which a public official is personally called names by implication of the wording of the mandate unworthy of any Court in view of the character of his honor as Mayor of the city of St. Louis, Missouri.

With respect to point one Amici challenge that a woman has a federal constitutional privacy right not to bear her child but to abort it and that because of her poverty, public hospitals see to it that her request is satisfied within her first trimester of pregnancy where no medical indications exist.

II

The Opinion-Judgment of April 14, 1975 as Modified May 7, 1975 and June 2, 1975, the Denial of the Request of Petitioners for Rehearing June 24, 1975 by the United States Court of Appeals for the Eighth Circuit in Causes Numbered 74-1232 and 75-1069, the Mandate on July 8, 1975, and the Orders, Judgment, Decree and Opinion of the United States District Court for the Eastern District of Missouri, Eastern Division, Issued Friday, August 8, 1975 Are Unconstitutional in Every Relevant Aspect of the Constitution Wherein the Highest Value Is Placed Upon Every Human Life, Every Human individual, Every Person Classically Embodied in the Universal!, "The Sanctity of Life". . . .

A. **These opinions, judgments and decrees have no warrant or justification in the prior decisions of this court.**

We want to speak in universal language to men of faith, men of little faith, men of no faith so that we may come to know more completely the gift of life of personhood which the Creator gives to all in His mysterious and loving Providence. And having said this, it is only fitting and proper that we set down, herewith, in expression of our profound respect and love for our Creator. To our God, our beloved Creator, be forever adoration, surrender, love, praise, honor, and glory forever. For His first gift, Life to each of us by name.

Against such a course of action by this government, one is moved by what has been described as a Responsorial Psalm (Dt.

32), part of the Liturgy for Monday, August 16, 1976, as reported in Pray Together, Saint Francis Xavier (College-Church) Parish Community, St. Louis, Missouri, for the Feast of St. Stephen of Hungary at page 42:

> "You have forgotten God who gave you birth.
>
> You have forgotten God who gave you birth.
>
> You were unmindful of the Rock that begot you.
>
> You forgot the God who gave you birth.
>
> When the Lord saw this, he was filled with loathing
> and anger toward his sons and daughters.
>
> You have forgotten God who gave you birth.
>
> 'I will hide my face from them,' he said,
> 'and see what will then become of them.
>
> What a fickle race they are,
> sons with no loyalty in them?
>
> You have forgotten God who gave you birth.
>
> Since they have provoked me with their "no-god"
> and angered me with their vain idols,
>
> I will provoke them with a "no-people";
> with a foolish nation I will anger them.'
>
> You have forgotten God who gave you birth."

Make no mistake about it, there are a vast majority of citizens and others that are resolutely committed to undo the dishonor brought upon this Honorable Court. As it was persuaded by clever political, sociological, etc., reasoning to do what it did on January 22, 1973,—in summary—*declaring that a woman with child may abort it with the aid of her physician at will to satisfy her convenience.* At whatever point, in the gestational continuum of life, that is to say, from the first moment of conception to the last moment before natural birth (or such natural

birth as may be aided by the blessings of present day biological science, medicine, and technology.

On that date at whatever hour this Court affixed its official approval of such an unethical and immoral public standard of conduct and behavior as reflected in the Vuitch, Roe v. Wade and Doe v. Bolton cases it unleased upon this nation and its people one of the most tragic attacks on mankind ever recorded in the annals of man's sojurn here.

In truth, it is a libertine non-standard of political life and morals for the nation, unleasing a policy, providing an impetus for and interposing death nationally, with international implications for the human race, which can only lead inevitably, to ethical and moral catastrophe if accepted (and God forbid) as a universal political norm of conduct sanctioned by the State.

Petitioners are particularly concerned about the action of the United States Court of Appeals for the Eighth Circuit in causes No. 74-1232 and 75-1069 in its mandate given on July 8, 1975, following an initial opinion-judgment of April 14, 1975 as modified May 7, 1975 and June 2, 1975, as set out in pertinent aspects of the appendix of the parties and in brief of petitioners (printed copy is available for citation).

As a corollary to such mandate, Amici are concerned about the orders, judgment, decree and opinion of the United States District Court for the Eastern District of Missouri, Eastern Division, issued and commencing April 14, 1975 and concluding with mandate Friday, August 8, 1975.

In general Amici urge upon this Court that said mandate, orders, judgment, decree and opinion are unconstitutional in every relevant aspect of the constitution, *oriented as it is to the sacredness of human life*, individuated and personified, otherwise

spoken of in the wisdom of the ages as "the sanctity of life", and of course, most particularly, when speaking of the human kind.

Of course, the real mischief that we complain of here, is that perpetrated by the United States Court of Appeals for the Eighth Circuit, rather than the obedience to its mandate forced upon the District Court, the Honorable Judge Roy W. Harper, presiding judge therein, for it is quite evident from the entire record, that this Honorable Judge found the complaint of Respondents without merit and the mandate of the Court of Appeals abhorrent and alien to everything this nation has stood for in its origin, its birth, and development to very recent years. That such a Judge in his late years should have to bend to a Higher Court such as the Eighth Circuit, made up of some men infected with the audaciousness to impose upon this nation and its people a public policy of active participation and political alienation among the Americans in the slaughter of the innocent unborn, is indeed a heavy burden to carry.

B. **If they might be construed as logical corollaries of the prior decisions of this court, and most particularly, in the line of cases commencing with the Vuitch case and going on to Roe v. Wade and Doe v. Bolton, then these latter mentioned cases of this court should be reviewed, clarified, curtailed in breath of application to abortion and, of course, in the opinion of very many, including amici, and on the authority of the greatest wisdom available to man, reversed.**

The cases of *Roe v. Doe* (and Vuitch) are without precedent in the law of any nation amici are aware of, in the broad attack upon human life by this prestigious Court. The train of decisions in the lowest Federal Courts that have obeisantly followed the edicts of these opinions are too numerous to read and refute point by point in the short time counsel for Amici have, taking into account his present circumstances (see Motion herein preceding Brief Proper).

However, it can reasonably and truly be said that the general citizenry of our nation are not so gullible as to fail to note the almost daily frequency with which the newspapers of our nation, our radio stations, and our television stations and networks announce new and deadly opinions issuing forth from our lower Federal Courts. One is inclined to add to the expression "deadly" that of "devilish"; their "worldly" defiance of the Creator Himself, or cowardly obeisance to the opinions in *Vuitch*, *Roe* and *Doe* shock the conscience of a growing number of Americans. Such defiance or obeisant submission to a fundamental abuse of the concept of "Liberty", necessarily rooted in a correlative sense of, Responsibility as well as right, does violence to the law written by the Creator in the heart of every man and woman.

It is further obvious to any reflective American that we have strayed a long way, or far afield from the right use of our passions and sexuality and have become slaves of the flesh. Who speaks of fornication today with a sense of impropriety, ethical dalliance, amoral behavior or sin, whether it be by a single act or habit of the infidelity of married men and women. The nation advertises with regularity the estimated fifty percent or better collapse of marriages solemnized in civil and religious ceremonies with the resultant catastrophic violence done to the offspring of such unions. Do we deliberately forget the admonition of St. Paul that along with those given over to murder and fornication among a long list in violation of the Second Commandment (like unto the First) that they will not enjoy the beatitude of ETERNAL LIFE?

The Sacred Writers make such truths abundantly clear and grave passages of Holy Writ tell us, that God's Goodness is not mocked as of course other passages tell us of God's Infinite Mercy.

The people of this nation have nowhere to turn in a political sense at the present but to this Honorable Court for a redress

of what at the present time in plain English is legally sanctioned carnage of the unborn child, no different than what was described at Nuremberg as "crimes against humanity," at Dachau, Buchenwold, Auschwitz and the like.

This Court should not under God legalize such inhumanity, cruelty, barbarism, perpetrated on human life, cradled and nurtured by His design in the womb of woman, or give aid and comfort and abet those who believe (if they do) in a liberty which in and of itself brings condemnation and negates responsibility to protect, defend and foster TRUE LIBERTY which undertaking identifies the Sons of God.

This nation with the frequent assistance of this Court has imposed upon itself an obligation to support abortion for the poor, under an assumption, really defined euphemistically, as "medical indications" and including thereunder mere convenience. Applications of such public amorality standard is rooted in total selfishness, without reason, without faith, without hope, without love, without imagination, without possibility, and sows the seeds rapidly and wildly of our own collapse as a nation contrary to its avowed ideals. For who could say that the 56 Signers of the Declaration of Independence, who gave so much of their lives, their fortune and their sacred honor to foster a great people, could ever have contemplated a great future and a great promise for mankind when they set their hand to that great document (many of whom subsequently urged the adoption of a Constitution, the general purpose set out in the Preamble thereto,—to promote the "general welfare," also urged the adoption of our Bill of Rights and grieved over the lack of unanimity in abolishing in their time the institution of slavery had they urged public support of the practice of abortion? This is a matter of some substantial historical record, that they of course did not!

This Court's action in the spirit of the above comments with respect to the issue in the case before this Court will either

vindicate once again the most basic human right given by the Creator and recognized explicitly in the Declaration of Independence and by reasonable construction in the Constitution, Bill of Rights and subsequent Amendments, or by converse action, attempt to make cowards of us all, and it must be said, enemies, hostile to the Creator.

Critic of Roe and Doe Continued

There is really only one question in this case and all those decided in any federal court and pending therein on the subject of the "Sanctity of Life," and that is: is our Constitution and the Declaration of Independence (and dependence on the Creator) now permanently to receive such a materialistic, secular interpretation, that on the very question of the gift of our lives from the beginning thereof to their end, this Constitution and Declaration is to be construed by this Court subject to an ever broadening scope of public policy deciding who shall live, and who shall die, and when?

Putting the matter in another way, is our Constitution to be so construed by this Court as to authorize violent interference with human life? If the answer in fact is yes, culpably then, the contemporary servants of the people of this nation, who govern by a trust and grant of power from the people, under God, thereby incur a conviction of hostility to the Creator.

On this score culpability rests more particularly upon conclusions contrary to nineteenth-twentieth century science, eighteenth century development of Republican-Democratic politics leading to the birth of a nation, in which men and women sacrificed life, fortune, sacred honor to achieve it, and knowing yet, the flaw in their charter, had to struggle to rid it of the denial of full humanity to the Indian and Black by writing into the document the abolition of slavery in the nine-

teenth century, for which again men and women gave their lives, sacrificed their fortune and their sacred honor, and again in the twentieth century finally with the aid of this Honorable Court, cut through the pretense of 100 years non-compliance, to affirm the sanctity, the dignity of every person born into this world.

The culpability further rests, not only on the scientific data with which we are now blessed, and the political advancement (until recently so highly lauded) but on other sources also of knowledge, understanding, and reason in the distilled wisdom of philosophy, guided by the illumination of the Creator revealed in Yahweh, and for the Christian revealed of the Father, in Jesus Christ, in union with the Spirit, who continue to pour out blessings and knowledge and understanding and reason and wisdom in every field of human endeavor.

Among other things, it is said with callous indifference to the sanctity of human life by the scrivener in *Roe v. Wade* at 410 U.S. 116-166

> "The Texas federal appeal and its Georgia companion Doe v. Bolton, . . . present constitutional challenges to state criminal abortion legislation (in effect for a century in the former state of Texas and in contrast in the state of Georgia with a modern cast, reflecting the influence of recent change, advancing medical knowledge and techniques, new thinking about an old issue) . . . challenges to population growth, pollution, poverty, and racial overtones . . . complicating . . . the problem."

Lochner v. New York, 198 U.S. 45, 76 (1975), is wrenched out of context to provide a backdrop to what is to follow. Acknowledgment is made of a previous century of adoption of criminal abortion statutes when the population was dominantly Christian and Protestant, not Catholic, to in fact protect the life of the unborn gift of human life in pro-creative

cooperation between men and woman with the Creator as the first and singular gift to mankind (Part I).

In Part II account is given that the complainant relies on a "right of personal privacy," alleged to be protected by the First, Fourth, Fifth, Ninth and Fourteenth Amendments.

In Part III the Court opts for review of the case on appeal from a denial of injunctive relief and the declaratory aspects of the case below under Section 1253, though suggestion it should have come on petition for certiorari.

In Part IV, there is hint of a serious question of justiciability, standing and abstention on the record of the case, despite the conclusion with respect to Roe, reached in the opinion. Of course the Does back at that time (at page 127) of the opinion were refused standing because of the speculative nature of the complaint as not one of an actual case or controversy. Intervenor Dr. Halford failed to state a claim of "substantial and immediate threat to any federally protected right."

In Part V, first sentence at page 129 the court describes "the principal thrust of appellant's attack, on the Texas Statutes . . . as . . . improperly [avoiding] a right . . . by [a] pregnant woman, to choose to terminate her pregnancy. Here for real the Court puts its finger on the issue. What is a pregnant woman unless she is a woman who has conceived an individual human life beyond violation by any man. Dr. Bart T. Heffernan, M.D. tells us well what a woman conceives:

> "We have seen in recent years a strange, but sad to say not a new, phenomenon in the affairs of men. The data of science have been manipulated, denied or distorted to fit a political or sociologic posture. The abortionists have propagandized our citizens with pseudo-science in order to protect the theories and humanitarian claims of their cause. The blob theory, the main tenet of the tissue-of-the-mother

school of embryology, has been advanced for public scrutiny without so much as a note of public criticism from the scientific community or the medical profession.

Our society, because of these failures, stares at the wall of the abortorium and fails to see that it is no different from the barbed inclosures of another recent time. It is clean, aseptic and run by well-dressed, efficient men in white. The victims are anonymous and unseen. Psuedoscience has re-defined them in order to rob them of their rights.

It is in respense to this tragedy that the following data have been assembled. We should read this account with interest and some fascination, for it represents a biography of everyman during those moments of his greatest potential and most rapid development.

The unborn offspring of human parents is an autonomous human being.

Even before implantation in the wall of the uterus the unborn child may be responsible for the maintenance of the pregnant state in the maternal metabolism (1). The child whose tissue is antigenically different from the mother sets up protective mechanisms to prevent maternal immunologic responses from causing fetal distress (2). The newly formed child has a remarkable degree of metabolic autonomy (3). For example, the fetal endocrine system function autonomously (4).

The recent recognition of this autonomy has led to the development of new medical specialties concerning the unborn child from the earliest stages of the pregnancy, i.e., fetology and perinatology (56).

Modern obstetrics has discarded as unscientific the concept that the child in the womb is but tissue of the mother. As Dr. H. M. I. Liley, the New Zealand pediatrician (and research assistant to her famous husband, Dr. Albert Liley, who perfected the intra-uterine transfusion), has said:

> Another medical fallacy that modern obstetrics discards is the idea that the pregnant woman can be treated as a patient alone. No problem in fetal health or disease can any longer be considered in isolation. At the very least two people are involved, the mother and her chlid. (5 at p. 207)

From conception the child is a complex, dynamic, rapidly growing individual. By a natural and continuous process the single fertilized ovum will, over approximately nine months, develop into the trillions of cells of the newborn. The natural end of the sperm and ovum is death unless fertilization occurs. At fertilization a new and unique individual is created which, although receiving one-half of its chromosomes from each parent, is really unlike either (8, 6, 9; 10 at p. 18).

The events that follow fertilization are self-generated by the new individual under the guidance of his new and absolutely unique hereditary plan. The new combination of chromosomes sets in motion the individual's life, controlled by his own individual code (genes) with its fantastic library of information projected from the past on the helix of Desoxyribonucleic acid or DNA. A single thread of DNA from a human cell contains information equivalent to six hundred thousand printed pages with five hundred words on a page, or a library of one thousand volumes. The stored knowledge at conception in the new individual's library of instructions is fifty times more than that contained in the *Encyclopedia Britannica* (7). These unique and individual instructions are operative over the whole of the individual's life and form a continuum of human existence even into succeeding generations. Dr. Hymie Gordon, Chief Geneticist at the Mayo Clinic, states it thus:

> . . . from the moment of fertilization, when the deoxyribose nucleic acids from the spermatozoon and the ovum come together to form the zygote, the pattern

of the individual's constitutional development is irrevocably determined; his future health, his future intellectual potential, even his future criminal proclivities are all dependent on the sequence of the purine and pyrimidine bases in the original set of DNA molecules of the unicellular individual. True, environmental influences both during the intra-uterine period and after birth modify the individual's constitution and continue to do so right until his death, but it is at the moment of conception that the individual's capacity to respond to these exogenous influences is established. Even at that early stage, the complexity of the living cell is so great that it is beyond our comprehension. It is a privilege to be allowed to protect and nurture it. (71)" Bart T. Heffernan, M.D., The Early Biography of Everyman, Ch. 1, pp. 3-5. Abortion and Social Justice, Thomas W. Hilgers and Dennis Horan, Sheed and Ward, New York, 1972.

Another approach to what we are talking about causes in response to the question in a letter from Robert Brungs, S.J.

Under date of August 11, 1976, Robert Brungs, S.J., Director of the Institute for Theological Encounter With Science and Technology, in a letter to counsel for amici, states:

Dear Mr. Ratermann:

I have looked around and asked several people about books on embryology that might be useful to you. Unfortunately all the people I would most like to have asked are away on vacation. I do have one suggestion by way of a popularized treatment which, in fact, might be more valuable than an actual scientific approach. It is a book with which you may already be familiar: "The First Nine Months of Life" by Geraldine Lux Flanagan, Simon & Schuster, N.Y., 1962. It is somewhat out of date, but I believe that the information gained since 1960 in embry-

ology would support the description given here. George Corner, M.D., Prof. Emeritus of Embryology of Johns Hopkins says of it: "It gives a sensitive and scientifically impeccable account, illustrated with authentic photographs, of the hour-by-hour, month-by-month development of the human embryo from egg cell to birth." Copies of this book could possibly be obtained from the Archdiocesan Pro-Life Committee, 462 N. Taylor.

This book, already 16 years out of date, would represent a "minimalistic" statement. By this I mean that a statement like "The heart is usually beating by the twenty-fifth day" might no longer be accurate, but the inaccuracy (if any) would lie in the fact that the beginning of a heart-beat would be *earlier*, not later. In other words, we may now know more (by the use of more sensitive techniques) but that knowledge would push things like the on-set of a heart-beat *earlier* into the pregnancy. We can accurately say of the information in this book that it represents the later limits of the time of the beginning of the organ function, not the early limits.

Also, if I may, I'd like to point out just a few statements that might be of help:

(1) p. 18 "The pages that follow give us a kind of window into the womb. Through it we can watch a baby from his first moment, his real birth, which precludes the day of being born by nine months."

(2) "In this book, the age of the baby will always be computed from this beginning (i.e., fertilization). . . . The Chinese, by ancient custom, declared a child to be one year old at birth. They long ago acknowledged that we are not new at birth."

(3) "From their first hour the human cells are distinctly human."

(4) All of page 51 and p. 53.

(5) p. 59 "The month-old embryo is 10,000 times larger than the fertilized egg was. The single egg has given way to a finely structured if still incomplete body. In four more weeks, by the end of the second month, it will look quite like a tiny baby."

(6) 61-62 "In its seventh week it bears the familiar features and all the internal organs of the future adult, even though it is less than an inch long and weighs one-thirtieth of an ounce. It has a human face, with eyes, ears, nose, lips, tongue, and even milk-teeth buds in the gums. The body has become nicely rounded, padded with muscles and covered by a thin skin. The arms, only as long as printed exclamation marks, have hands with fingers and thumbs. The slower-growing legs have recognizable knees, ankles and toes.

The new body not only exists, *it also works* (emphasis mine—I believe this is extremely important). The brain, in configuration already like the adult brain, sends out impulses that coordinate the functioning of the other organs. The heart beats sturdily. The stomach produces some digestive juices. The liver manufactures blood cells and the kidneys extract some uric acid from the blood. The muscles of the arms and body can already be set in motion.

. . . Until adulthood, when full growth is reached between the years of twenty-five and twenty-seven, the changes in the body will be mainly in dimension and in the gradual refinement of the working parts."

There is much more of this kind of information in this book. I would recommend that copies be made available for the justices.

On another level, I have a few observations that may or may not be helpful. They probably will not be so persuasive to the justices but perhaps they ought to be made "for the record."

(1) The fourteenth amendment in effect "made" blacks "persons" before the law. Obviously nothing had changed in the blacks, so it would be better to state that the government finally recognized the personhood that blacks had had already in virtue of their humanness. In effect the amendment stated that personhood could not be denied on the grounds of some kind of "social dependency." The present Supreme Court, on the contrary, has denied personhood on the ground of "physical dependency", thereby discriminating on the basis of size and age. Given the opportunity to foster the tradition of philosophical liberalism, which at its best has attempted to open to as many people as possible the right and privileges of being, and of being regarded as, human, the Supreme Court has become, in fact, reactionary and obscurantist. It has decided to narrow the human community rather than expand it—contradicting in the process the liberal spirit and the liberalizing movement in history. It has taken a giant-step backward to the "dark ages" when *only* might makes right." In so doing it has denied its own traditions. A curious reversal, indeed!

It has now forged a tradition new to western jurisprudence that creates a whole class of "outlaw," in the sense of those who are beyond the protection of the law, denying them even the protection of the "mark of Cain." In making "discrimination on the basis of physical dependence" the "law of the land" it has reversed the position of very recent Court tests on discrimination and thereby has made those who are physically dependent (the un-

born, the retarded and the senile) subject to the "tolerance" of the society as regards their right-to-life. They have seen fit to rewrite the Declaration of Independence to the extent that inalienable rights no longer have the Creator as their source. These rights are now given by the State to those who are deemed "worthy" or "wanted." This can be done in the simplest way possible, by an *arbitrary* denial of personhood, precisely the same road that led to Auschwitz, Dachau and Buchenwald. How short our memories and deep our blindness! Private citizens now possesses the power of capital punishment based on whimsy, arbitrariness and convenience. An incredible reversal of western jurisprudential progress!

(2) Finally, the Poelker case does not really impinge on Roe vs. Wade, but on a seemingly ineluctable progression of thought, namely, that abortion is not only legal (Roe vs. Wade) but that government must provide it. This progression says that *all* citizens (whatever their conscience might dictate) must support abortion (through their taxes). The third step is even more automatic: doctors and nurses are citizens and will have to support the performing of abortions (through their skills). This, I believe, is the import of the recent Kentucky court finding against several nurses and doctors who refused to perform abortions. Remember, the licensing power is ultimately in the hands of the State. The Poelker case is important in terms of the conscientious right of the citizenry as a whole, and doctors and nurses in particular, to refuse to cooperate in *mandated* abortions. If gambling is legal in a given jurisdiction, must the government subsidize the poor so that they have equal access with the rich to the tables?

This has grown to impossible proportions and I had better just end. I wish you success in your fight for the

rights of the unborn and God's blessing on the effort. I hope the above may be of some use to you.

In Christ,

ROBERT BRUNGS, S.J.
Director: ITEST

RAB:bem

EXPLANATION OF GAP IN THIS BRIEF

(At This Point, There Is a Major Gap in the Completion of This Brief for the Reason That It Is Now 12:15 A.M., August 19, 1976 and Counsel for Amici, Working With Four Professional Secretaries, One Starting Wednesday, August 18, 1976 at 8 A.M., Mother of Six Children, One a Kelly Girl Earning Tuition Money to Continue Her Studies in Music at Forest Park Community College, St. Louis, Missouri, Starting at 8:30 A.M., Wednesday, August 18, 1976, and Another After Working a Full Eight Hour Day at Her Regular Employment Starting at 7:30 P.M., August 18, and Still Another Mother of Six, Starting at 7:00 P.M., August 18, Are Exhausted and Must Take up Their Daily Tasks Between the Hours of 6:15 and 6:45 A.M. This August 19, 1976 and Therefore Cannot Be Expected to Stay at This Task Without Jeopardy to Their Families, Other Obligations and to Their Health. It Is Further a Fact That the St. Louis Law Printing Company on Advice of Mr. William Hood, Sr., Late This Afternoon by Phone, Indicated He Must Have a Completed Manuscript of Not More Than Thirty to Forty Pages at His Shop No Later Than 8:00 A.M. This Morning August 19, 1976 to Complete the Printing of This Brief for Delivery and Filing With the Clerk of This Court, August 20, 1976, According to Present Advice of Said Court.)

Finally, the Equal Protection necessarily involves a sanction which cuts several ways. In emphasizing the distinction between a constitutional right and a claim to socialization of that right, the reflection of Justice Black is especially pertinent:

> Nor does a grant to the People of the right to assemble, to speak, or to write carry any inference that the government must provide streets, buildings, or places to do the speaking, writing, or assembling.[1]

The differentiation becomes critical in a sensitive and controversial matter of exacerbated public controversy seen by many protagonists therein as involving the genocide of the most innocent and defenseless members of the human race—a view asserted from avowedly non-religious perspectives (See Exhibit I) and adopted as the public policy of the financially beset community (See Exhibit II) whose subsidization as sought for abortion on demand and where affirmance of the decree below would, in a monstrous perversion of the establishment clause, implicate every St. Louis wage-earner[2] as a formal and material participant in the abortion process to a degree and in an intensity which "exceeds by far the 'three pence' which Madison condemned in his remonstrance."[3]

CONCLUSION

For all the above reasons, Points raised in Petitioners' application for the Writ of Certiorari, 1., 2. and 3., at page 3, thereof,

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[1] Black, *A Constitutional Faith* (1968) 60. See also Cox v. Louisiana, 391 U.S. 536, 539 (1965), Black, J. concurring.

[2] Revised Code of the City of St. Louis (1960), Chapter 145. An income "earnings" tax is a major component of the city's revenue.

[3] Douglas, J. dissenting in Lemon v. Kurfzman, 411 U.S. 192 (1973).

ought to be decided in favor of Petitioner. *Viutch, Roe v. Wade* and *Doe v. Bolton*, the recent "Seminal" precedent opinions of this Honorable Court ought to be reversed outright in favor of the Sanctity of LIFE, of the Sanctity of the CONCEPTUS.

ROBERT E. RATERMANN
11232 Bellefontaine Road
St. Louis, Missouri 63138

Also:

3701 Lindell
St. Louis, Missouri 63108
Attorney for Amici

REQUEST OF AMICI FOR LEAVE TO PARTICIPATE IN THE ORAL PRESENTATION AND ARGUMENT WHEN CASE IS DOCKETED TO BE HEARD

Amici request herewith leave of this Honorable Court to appear by counsel to participate as this Court may permit, in the oral presentation of this case when it is docketed to be heard.

MOTION OF AMICI HEREIN BY COUNSEL FOR LEAVE TO FILE ADDITIONAL BRIEF MATERIAL AND APPENDIX MATERIALS

In the light of counsel for Amici's letter of August 12 motion for time and Note 1 of brief, Amici moved by counsel for leave to file additional brief material and appendix materials on the grounds:

1. This brief has had to be put together in approximately three days under extremely difficult working circumstances.

2. Amici, by counsel have considerable additional material which they feel ought to be in the argument on the three points mentioned in Petitioner's Application for the Writ of Certiorari. Amici believe, in their relationship to the Court, that it ought to have before it such additional material for sound judicial consideration in reaching its decision.

WHEREFORE: Amici pray the grant by this Court, either according to rule, or suspension of rule, or some additional time in the discretion of the Court, to file supplemental brief material and appendix materials.

ROBERT E. RATERMANN
Attorney for Amici
In Support of Petitioners

State of Missouri }
City of St. Louis } ss.

CERTIFICATE OF SERVICE

I, Robert E. Ratermann, Attorney for certain Amici Curiae: Persons and Organizations, Social Workers for Life in support of Petitioners, being a member of the Bar of the Supreme Court of the United States, due hereby certify I have caused a true and correct copy of the foregoing brief to be served upon Petitioners and Respondents, they being all the parties of record by depositing such motion in a United States Post Office mailbox, with first-class postage prepaid addressed to Frank Susman, Esq., at his office of record, Pierre Laclede Center, 7733 Forsyth Blvd., Suite 1100, St. Louis County, Missouri 63105, Attorney for Respondents; Jack L. Koehr, City Counselor of the City of St. Louis, State of Missouri and Eugene P. Freeman, Deputy City Counselor of the City of St. Louis, State of Missouri, Room 314, City Hall, 1200 Market Street, St. Louis, Missouri 63103, Attorneys for Petitioners, this 19th day of September, 1975, and Jerome M. McLaughlin, Esq., at his office of record, 1930 Boatmen's Bank Building, St. Louis, Missouri 63102, Attorney for Amici, Missouri Doctors for Life, in support of Petitioners.

ROBERT E. RATERMANN
Attorney for Amici
In Support of Petitioners

APPENDIX

EXHIBIT 1

Commentary, December, 1975

TO: UTILITARIAN MAN

Do you see yourself as "God"?

Abortion doesn't solve the problems of society; only self-sacrifice and love can create a world of true humanity.

This is our message of hope. Give life, not death. . . . Life is always the answer.

NON-SECTARIAN COMMITTEE FOR LIFE

BOX 1234 MOUNT VERNON, N.Y. 10551

EXHIBIT II

OUR UNBORN CHILDREN LET THEM LIVE

Any society that denies the right of human beings to live—
will soon become its own executioner.

NON SECTARIAN COMMITTEE FOR LIFE
Box 1234 Mount Vernon, New York 10551

From Commentary, Volume Sixty-two, Number One, July 1976.
Commentary is published monthly by the American Jewish Committee,
Editorial & Business Offices: 165 E. 56th St., New York, N.Y. 10022

EXHIBIT III

Resolution Number 16 Adopted May 22, 1975

BE IT RESOLVED THAT the Board of Aldermen of the City of St. Louis respectfully applies to the Congress of the United States to call a convention for the purpose of proposing the following article as an amendment to the Constitution of the United States:

Article

Section 1. With respect to the right to life, the word person as used in this article and in the Fifth and Fourteenth Articles of Amendment to the Constitution of the United States applies to all human beings irrespective of age, health, function or condition of dependency, including their unborn offspring at every stage of their biological development.

Section 2. No unborn person shall be deprived of life by any person; provided, however, that nothing in this article shall prohibit a law permitting only those medical procedures required to prevent the death of the mother.

Section 3. The Congress and the several states have power to enforce this article by appropriate legislation.

BE IT FURTHER RESOLVED THAT a duly attested copy of this resolution be immediately transmitted to the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States, to each member of the Congress from this state, to the Governor and Lieutenant Governor of the State of Missouri.

Introduced this 21st day of May, 1975 by:

YES—20

Paul J. Simon
President and Aldermen
Cornelius M. Carroll
2nd Ward
Delores Glover
3rd Ward
Raymond Leisure
7th Ward
Thomas A. Connelly
8th Ward
Lawrence E. Fuerst
9th Ward
James E. Geisler
10th Ward
Albert Villa
11th Ward
James Komorek
12th Ward
Albert J. Holst, Sr.
13th Ward
Richard A. Gephardt
14th Ward
Leonard H. Burst
16th Ward
Frank C. Boland
17th Ward
Eugene O. Bradley
21st Ward
Nellene Joyce
23rd Ward
Alfred J. Giuffrida
24th Ward
Milton F. Svetanics, Jr.
27th Ward

NO—6

Bruce T. Sommer
6th Ward
Samuel Kennedy
18th Ward
Richard Singleton
19th Ward
Lawrence E. Woodson
20th Ward
Lerel Stewart
22nd Ward
Mary Stolar
25th Ward

———

John G. Roach
28th Ward-Excused
Wyman F. Smith, III
26th Ward-Absent
Milton F. Svetanics
27th Ward-Absent

Jo Anne Wayne
1st Ward
Geraldine Osborn
15th Ward
Daisy McFowland
4th Ward
Ernestine Hinton
5th Ward

TOTALS: 29 Constituting the Full Board Membership.

EXHIBIT IV

Chapter II

Comments on the Supreme Court decision re: citations from Catholic theologians, by Father Peter Damien Fehlner, O.F.M., Conv. S.T.D.

In matters of historical interpretation there is always room for differing reconstructions. What I have tried to show is that the construction placed on the history by the Supreme Court is rather implausible, and in fact is based on inadequate knowledge of the sources, and what seems to me to be shoddy scholarship barely disguised by a veneer of learning. In any case the doctrinal authority of Augustine and Thomas cannot be used honestly to support the position of the Supreme Court. Indeed the contrary is the case. Further the attempt to make the Catholic position depend on something like a theory of mediate quickening is to misunderstand the entire 2000-year-old tradition. Finally the identification (is it deliberate confusion?) of the question of intrinsic malice with the problem of appropriate penalty, of the internal and external forum in the Church and the relation between ecclesiastical and civil jurisdiction in various times underscores other dimensions of this problem. The implication (as

it seems to me) in the thrust of this argumentation that absence of penalty is equivalent to permission or possibility of permitting, legally supposes a theory of law (nominalistic) that is thoroughly secular, a position always rejected by the Church, because totalitarian and idolatrous.

It appears the scribe for this decision leaned on Noonan's first essay heavily. I doubt that Noonan would agree with the use made, but I also think he inadvertently opens the door to conclusions inimical to his own. The work of Huser, cited by the decision, but apparently not very influential in it—(was it actually read?) is useful and can be found in series of Canon Law dissertations of CUA, no. 162, R.J. Huser, The Crime of Abortion in Canon Law (Wash. 1943).

1. Thrust of argumentation in explanation of decision: to show that abortion is not something that has been forbidden absolutely because intrinsically evil, but has been variously permitted and prohibited in accord with legal definitions and public consensus as to its utility or harm. For this view numerous precedents are cited, including eminent representatives of Catholic doctrinal position such as Sts. Augustine and Thomas, who if they do not approve of abortion furnish grounds for permitting it by way of the teaching or mediate animation or quickening of the soul. From this point the medieval cannon and common law are interpreted as allowing at least the possibility that abortion in all instances is not homicide, and therefore not a crime.

2. Critique

a. Scholarship: I suspect that a good deal of this explanation is simply a selection of texts from secondary authors that appear to fit a conclusion already adopted on other grounds. The only citation from St. Augustine (note 22, 93, S. Ct. p. 717) is one of three given by Noonan, An Almost Absolute Value in History: in Noonan, The Morality of Abortion (Cambridge, Mass.

1970) p. 15-16, Noonan cites it as De Origine Animae, PL 44. 527). The correct title in Migne is: De anima et eius origine. PL (PL is the abbreviation for Migne, Patrologia Latina) in the hands of the Supreme Court becomes Pub. Law 44. 427, a rather odd misprint, probably a tattle tale sign of ignorance. A better selection for this discussion might have been Quaestiones in Heptateuch, Lib. II, Quaestiones de Exode, ¶ 80, (PL 34.626) also cited by Noonan, and which contains the classic passage later inserted in the Decretum Gratiani to which the Supreme Court refers in this note. Had the anonymous scribe read the single page 15 of the book of Huser which he cites, his note might have been considerably improved as regards the selection of augustian texts. As regards St. Thomas: no text references are given. Had the scribe read on a few pages (pp. 23-24), in the essay of Noonan he cites, he might have found a few handy ones to use as footnote decoration. Unfortunately, as Noonan makes so clear, St. Thomas commenting on St. Thomas' concept of mediate quickening and on abortion leaves no doubt as to the latter's intrinsic evil. Perhaps that is why no text is quoted. As regards the passing allusion to St. Thomas on movement as a sign of animation, one must comment that this is hardly original. Movement was regarded as a possibly valid empirical indication of life (I suspect it still has some use in this regard). St. Augustine mentions it in this connection in the text above from Quaes. in Hepta. But all of these doctors regarded this as indicative, no probative of the theory of mediate quickening.

b. Content of the argument may be attacked on the following grounds:

1. Complete ignorance of the basic reason always given in the Judeo-Christian tradition for the evil of abortion: contrary to the nature of generation, which means in the minds of the Fathers contrary to the goodness and justice of the Creator and his absolute rights over the giving and taking of human life from conception. In this tradition the moment of conception is the be-

ginning of human life, and the point at which any attempt to destroy that life is defined as abortion. The lack of exactitude in establishing empirically the moment of conception sometimes led to a confusion of what we would call contraception with abortion or visa-versa. In any case both were regarded as intrinsically evil because both contrary to nature (as defined above) in the same way. The clear distinction between contraception and abortion, a contribution of Augustine, as well as his distinction between abortion before quickening and after, was intended to be used and was used till the Supreme Court decided otherwise, to define the specific malice of different acts, not in view of showing that in certain circumstances they might be morally good; and to determine the appropriate penance or penalty. This in fact is the point at issue in the citation from Exodus commented on by Augustine—how explain the different penalties mentioned by Exodus for the same crime of abortion before and after animation. For this the theory of mediate animation is useful. But Augustine himself only proposes this as an exegetical hypothesis, which in no wise can be used to excuse abortion. In fact August in his Enchiridion, 85-86 (PL 40. 272) regards abortion committed before animation as worse for the child and therefore more sinful than that committed after quickening (because A. thought no resurrection possible unless one died and one could not die unless there were a soul to be separated from the body). All of this, however, in no wise permits anyone to cite Augustine as providing grounds for permitting abortion. Like all the contemporary Fathers of the Church, and in conformity with the canonical discipline of the Church from its origins to the Decree of Gratian, he regarded abortion as homicide, at whatever time of fetal development from conception abortion might have occurred. (Cf. Noonan, p. 16, n. 40, where he criticizes the views of Gonzales only on the single point that Augustine never actually said abortion before quickening was homicide. But neither did he say it was not. Like Ambrose, his teacher, Aug. simply called abortion murder, which in a classic passage from De Nuptiis et Concupiscentiis I, 15.17 [PL,

44.47-43, 44.] has its origin in lust, that normally shows itself in the form of sterilization or contraception, and finally in that cruelty known as abortion.)

2. Mediate Quickening or Animation: The theory (and Augustine, as every great Catholic theologian after him who proposed it, held it only as a tentative hypothesis, to be modified or abandoned either in view of revelation or better empirical evidence concerning the moment when soul and body are united) was first taken up by Augustine in connection with the problem of the origin of the soul (by direct creation or by generation or tradition from the parents). Augustine did not seem to be certain of the final resolution of the question, though he appears to have leaned toward creation later in life. Subsequently the question was resolved in terms of creation of the soul. The problem of mediate or immediate quickening (whether the soul was united to the body at the moment of conception or at some later point in fetal development) was left an open one. St. Augustine also used the theory as a means of resolving an old testament exegetical problem (Exodus—cf. supra). It is important to note that this theory is employed as a way of explaining the diversity of penalties for abortion committed at earlier and later stages of pregnancy, and is only proposed as a theory. Second, it is never employed in conjunction with the question of the intrinsic malice of abortion, which for Augustine is beyond question, and as far as can be determined is simply the same as murder, whenever committed. Augustine never produced a systematic theology in the modern sense. To argue as does our Supreme Court that lack of total consistency in explanations and hypotheses proves doubt on another point otherwise clearly affirmed as certain is to misunderstand grossly the nature of theology and to abuse the doctrinal authority of Augustine.

3. To question the advisability of punishing abortion as a crime, or to question the advisibility of differing penalties for different persons or circumstances is not identical with the question of

the malice of the act or of its radically criminal character. Or—That abortion need not be punished in civil or canon law in each instance or in the same way in every case is not equivalent to saying it may be permitted. And when in the late middle ages and early renaissance the possibility that abortion in all circumstances might not be intrinsically evil (because canon law between Gratian and Sixtus V only imposed penalties for abortion after quickening) was proposed, the Church responded by reaffirming the absolute prohibition and by commencing with Sixtus V to extend the canonical penalties to abortion committed at any stage of fetal growth, and finally with Pius IX (1869) of ignoring the question of mediate quickening altogether as a useful means for assigning penalties.

To understand this in context a bit of history if necessary. In the earliest canons of the Church (cf. work of Huser for convenient summary) which antedate Augustine, all abortion is equally condemned with the same severe penalties as reserved for murder. Later the severity of these in some cases, especially in regard to the mother, was reduced, but the basic principle was retained: abortion and murder are the same, and the penalties for each the same. Once interest in the specific differentiation of sins in view of an appropriate penance for each, and then in view of an analysis of the conscience of the penitent had taken root in Europe as a result of Irish missionary efforts (by A.D. 800), it was but a matter of time when someone would cite that text of Augustine on Exodus as a precedent for differentiating the relative malice of various sins of abortion, and the relative penalties attached thereto. The theory of mediate quickening thus came to be incorporated in the Decree of Gratian (12th century): abortion after quickening was punished with the penalties reserved for murder. Before quickening no penalty was imposed by canon law, i.e. for the external forum. The penance was to be assigned by the confessor in the internal forum. Further, until the last part of the middle ages, in the Christian policy then in force, the Church reserved cases of abortion to herself,

so that in practice whatever might be found in common law, or statutory law, but reflects the position of canon law and the moral theology standing behind it: in this case abortion is simply evil. This is quite clear from the theology of the 13th century. No theologian that I know of (i.e. reputable one), least of all St. Thomas hints, let alone says, that mediate quickening has anything to do with the evil of abortion, but only with the question of whether it should always be punished as murder. (Had our scribe read on a bit further in the essay of Noonan from which he seems to have copied or miscopied his references, he would have found the position of Thomas clearly stated.) St. Thomas holds that abortion can never be performed, no matter what good it effects, because it is always an evil means forbidden for the same reasons given by the Fathers. The theory of mediate quickening only explains why abortion before quickening is not murder strictly speaking. But because the theory of mediate quickening is not certain, and because the fetus before quickening already comes under the divine and natural law concerning men, such abortion came to be known as "anticipated" murder by the later followers of St. Thomas.

4. Because abortion was not punished in all instances in the external forum by canon law does not mean that it was permitted by law of canonically legal, nor does it imply that abortion was frequent in those days. But there is no denying that toward the end of the middle ages it did increase in frequency. Far from legalizing abortion as the solution (as the Supreme Court scribe seems to imply should be the logical consequence to be deduced from this development), the Church extended the penalties of canon law to abortion to all stages. (Sixtus V, Effraenatum).

At the same time theologians were once again questioning the certainty of the theory of mediate animation. In the case of the human nature of Christ, orthodox theologians who admitted the hypothesis as having a validity, had always posited

an immediate animation of the body of the Savior by way of a miracle at the moment of conception. For it was a canon of dogmatic theology that the Word at the moment of conception assumed a complete human nature, not body first and then soul. When the Franciscan John Duns Scotus proposed his explanations of the Immaculate Conception of our Lady, immediate animation had to be assumed, for only a soul can be filled with grace. A second miracle might be invoked in explanation, but the scotists soon came to question the need for this. For if immediate animation were the norm (and they could find no empirical evidence but only the authority of Aristotle contrary to this absolutely), then not only the Immaculate Conception consistently understood. And if this were so, then eventually it would be logical to return to the ancient canonical position re: the punishment of abortion—i.e. all abortion is murder as a specifically distinct category of sin, because it involves separation of soul and body, i.e. death in the strict sense. What is interesting in all this discussion of specific differences of sin is that the theory of mediate animation never leads anyone to doubt the intrinsic dignity of the living human being, i.e. from conception, whether animated or not, formed or not. The question of animation decides not whether abortion is evil, but what kind of evil. The Supreme Court version of history very conveniently obscures all this.

The Franciscan theology in those centuries had more adherents perhaps than the thomist, and it was propagated in popular terms by a host of preachers of the Order. And while it is true that many still followed the theory of mediate animation, the grounds for another logic had already been laid. Sixtus V, himself a famous Franciscan theologian, neither affirmed nor denied the theory of mediate animation. He simply revised canon law in a way that coincided with logic of Scotus and the needs of the time for penalties to control the increasing frequency of abortion before "quickening". Some of the immediate successors of Sixtus as Pope modified the severity of his

prescriptions, but the essential point remained, all abortion would be punished in canon law.

5. In the 15th and 16th centuries common law and statutory civil law began to be concerned more frequently with the problem of abortion—principally to control and punish it. At first this seems to have come about because the secular arm was useful and necessary in enforcing the decisions of ecclesiastical courts. But the erastian theories of the later Renaissance and then the Protestant revolt tended to take the problem out of Church courts and put it in the civil ones. During the 16th century the question of therapeutic abortion, i.e. to save the life of the mother began to be raised as something permissible under certain circumstances and at certain stages of fetal development. Within Catholic circles the question was resolved by introducing the principle of double effect. Direct abortion was never allowed; indirect abortion might be permitted in certain circumstances. In any case abortion in strict sense (direct abortion) was always declared evil by Holy See when queried. Innocent XI (1679) condemned the contrary view. Noonan in the essay cited earlier summarizes the subsequent discussion in Catholic circles down to Casti Connubii. He analyses this as a weighing of values, which to mind is an unsatisfactory presentation. It leaves the impression that abortion in some sense is permissible. It might be more helpful to note (as with direct and indirect sterilization) that we are dealing with two different moral acts from an objective point of view. One is intrinsically evil, the other is neutral. Perhaps a different name in the vernacular for indirect abortion would be better. In any case the need of indirect abortion to save the mother has been progressively reduced through the advances of medical science, indirectly confirming the wisdom of the Catholic tradition. One may argue in specific instances that it is difficult to distinguish direct and indirect abortion. This does not affect their real difference, or the possibility of distinguishing in most cases.

The same problem was raised in the 16th century in non-Catholic circles concerning therapeutic abortion. Some tried to forbid it entirely; others wished to permit it. The latter prevailed in fact especially in the 19th century when stricter antiabortion laws were enacted. But since the Protestant world did not accept the principle of double effect, and the civil law was no longer influenced by developments of Catholic theology subsequent tc the Reformation, the distinction of direct and indirect abortion in relation to therapeutic abortion is not reflected in our civil law. This seems to me one explanation of the famous or infamous exception that Catholics reject and Protestants contrary to abortion accept. For the rest the use of the theory of mediate quickening in English and American law after the Reformation reflects medieval antecedents outside their proper context, i.e. inspired by the divinely instituted tradition of the Church. This is a capital point in the evaluation of the Supreme Court's interpretation of history—far from proving continuity of development from ancient times to ours in terms of a theory of abortion based on legal permission or prohibition, the history reveals gaps between Catholic views and those of others. The Catholic tradition does not form a part of or a basis for the decision of the Supreme Court.

6. Recently Fr. Donceel, S.J. in Theological Studies has tried to rejuvenate the theory of mediate animation in the context of the abortion controversy, with—so it seems to me—the ultimate purpose of raising questions concerning the basis of the Catholic position against abortion (something St. Thomas never appears to have done with the theory). I am personally unconvinced by the efforts and believe the theory of immediate animation still holds the field in theology. In any case the dignity of the human being from conception rests not as a theory of quickening, but on the eternal law and natural law as perfected by Christ. Abortion, like contraception, is contrary to nature, where nature means not in the first instance the infra-human, but the personal and supra-human in God. In view of this, thomist

moralists who held for mediate quickening have also held that abortion before quickening in practice must be related to murder, and that since abortion involved the rights of a person and ultimately the possibility of salvation, a probable theory such as this one could not be invoked to resolve difficult cases. For in matters of justice and salvation theories of probabilism had no bearing—one is always obliged to act in accord with the safer opinion. Oral Arguments in the Supreme Court Abortion Decision, Chapter II, "SANCTITY OF LIFE" publications, ltd., Vol. 1, Jun. 22, 1976, First Edition, printed by Gateway Press, Inc., St. Louis, Mo.

EXHIBIT V

Resolution No. 2458, 1975

Introduced by Councilmen Butler, Bischof and Breihan

RESOLUTION

WHEREAS, medically and scientifically a human embryo or fetus exists as a living and growing human individual from the time of conception; and

WHEREAS, human life is a continuum and the moment of birth represents merely an identifiable point along the course of human development and not the beginning of human life; and

WHEREAS, respect for human life has been a hallmark of civilized society for millennia; and

WHEREAS, respect for and protection of unborn human life has been traditional with the medical profession since long before the beginning of the Christian era regardless of prevailing political, religious or social ideologies or dogmata; and

WHEREAS, a legal threat to the right of life of any individual member of a society imperils the right to life of every other member of that society; and

WHEREAS, there is ample legal procedure regarding legal rights of the unborn; and

WHEREAS, in States in which abortion laws have recently been relaxed or repealed, professional medical ethics and respect for unborn human life has proved to be wholly inadequate for the reasonable protection of the lives of the unborn; and

WHEREAS, Public Health and Hospital Services should not be used for social purposes such as abortions rather than for health services; and

WHEREAS, the United States Supreme Court has withdrawn all legal protection from an entire class of human beings, namely, the unborn; and

WHEREAS, the United States Supreme Court has gone far beyond its judicial authority by exercising legislative functions;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

38-147

SECTION 1. That the Congress of the United States take appropriate action toward amending the Constitution of the United States establishing that human life with legal personality begins at the time of conception, and that all constitutional rights, including due process of law, apply to the unborn in the same manner and to the same extent as to all other citizens of the United States.

SECTION 2. That the Administrative Director of the St. Louis County Council is directed to transmit a copy of this Resolution to the President of the United States, to the President of the Senate of the United States, to the Speaker of the House of Representatives of the United States and to each member of Missouri Congressional delegation, to the Governor of the State of Missouri, to the Lieutenant Governor of the State of Missouri, to the Speaker Pro Tem of the Senate of the State of Missouri, to the Speaker of the House of Representatives of the State of Missouri, to the Supervisor of St. Louis County.

Adopted July 17, 1975.

Carl W. Breihan
Chairman, County Council

Attest: Lela Apperson
Deputy Administrative Director

State of Missouri
St. Louis County

I, James H. White, County Clerk in and for said County, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Council, on the day and year above written as the same appears on record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said County at office in Clayton, this the 18th day of August, 1976.

James H. White
County Clerk

By Lela Apperson, D.C.

Recorded in the Journal of the St. Louis County Council, July 17, 1975, pages 717 thru 720.

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